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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,261	09/29/2003	Van Au	J6817(C)	1763

201 7590 12/20/2005

UNILEVER INTELLECTUAL PROPERTY GROUP  
700 SYLVAN AVENUE,  
BLDG C2 SOUTH  
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/674,261

**Applicant(s)**

AU ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/3/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on October 03, 2005 has been entered.

### *Claim Rejections - 35 USC § 103*

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP 0148466) in view of Lapidus et al. (US 4,104,021)

Nomura et al. (EP 0148466) teaches an alkaline hair dyeing composition comprising p-phenylenediamine as an oxidation dye in the amount of 2%, ammonium carbonate in the amount of 3%, sodium edetate as a chelant agent in the amount of 2%, water as a carrier and oxidizer in the amount of 6% as claimed in claims 1, 4 and 15-16 (see page 12, table 3, composition O).

The instant claims differ from the reference by reciting a method for dyeing hair comprising applying to the hair a dyeing composition for a number of treatments having a set time interval between each two consecutive treatment.

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Lapidus (US' 021) in analogous art of hair dyeing processes, teaches a process for dyeing hair comprising applying to the hair a mixture of a colorant-oxidative solution in successive applications for a time period up to 5 minutes and of substantially the same length for each subsequent application and wherein the application can be repeated once every 2 to 8 weeks and wherein the process comprising the instruction for use the dyeing composition as claimed (see col. 4, lines 45-63 and col.7, claim 1). It is further taught by Lapidus that the depth of shade is obtained by successive treatments (see col. 3, lines 10-15).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to apply such a composition by using the process as taught by Lapidus (US' 021) to arrive at the claimed invention because Nomura et al. (EP' 466) as a primary reference clearly teaches a hair dyeing composition comprising coloring agents, ammonium carbonates, chelant agent and oxidizing agent in the claimed amounts as described above. Lapidus (US' 021) as a secondary reference clearly teaches a method for dyeing hair comprising applying the dyeing composition in the successive applications, and, thus, a person of the ordinary skill in the art would be motivated to apply to the human hair in successive process a dyeing composition that comprises oxidation bases, ammonium carbonate, chelant agent and oxidizing agent with a reasonable expectation of success for producing a deep shade of colors, and would expect such a process to have similar results to those claimed in the absent of contrary.

3 Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomura et al. (EP 0148466) in view of Lapidus et al. (US 4,104,021) and further in view of Schwarzkopf (FR 1070766).

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The disclosures of Nomura et al. (EP' 766) and Lapidus et al. (US' 021) as described above do not teach or disclose the claimed species of chelants as recited in claims 2 and 3.

Schwarzkopf (FR' 766) in other analogous art of hair dyeing formulations, teaches a dyeing composition comprising 1% of diethylenediaminetetraacetic acid and 1.5% of sodium triphosphate as chelat agents as claimed (see page 2, Examples 2 and 3).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the dyeing composition of Nomura by incorporating the chelant agents of Schwarzkopf (FR' 766) to arrive at the claimed invention. Such a modification would be obvious because Nomura teaches a dyeing composition comprising sodium edetate as a chelant agent (see page 12 table 3). Schwarzkopf (FR' 766) as a secondary reference teaches the claimed species of diethylenediaminetetraacetic acid and sodium triphosphate (polyphosphoric acid salt) in a hair dyeing composition (see page 2, Examples 2 and 3), and, thus, a person of the ordinary in the art would be motivated to incorporate these chelant agents as taught by Schwarzkopf (FR' 766) in the dyeing composition of Nomura et al. (EP' 766) with reasonable expectation of success for improving the dyeing performance of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 5 and 8 it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a composition by optimizing the ratio of the dyeing ingredients in the composition in order to get the maximum effective amount and would expect such a composition to have similar properties to those claimed in the absence of contrary.

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With respect to claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to contact the hair with the dyeing composition for a period of the claimed time because Lapidus teaches the application for a time period up to 5 minutes, which is a very short time period by conventional dyeing standards as taught by the reference (see col. 4, lines 47-49) and wherein the time period range is overlapping with the claimed range, and, thus, a person of the ordinary skill in the art would expect such a method to have similar properties and similar results to those claimed, absent unexpected results.

With respect to claim 7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply to the hair a dyeing composition in a number of treatments because Lapidus clearly teaches that the application of the dyeing composition to the hair can be repeated more than three times (see col. 4, lines 45-63), and thus, a person of the ordinary skill in the art would be motivated to apply the dyeing composition to the hair in several treatments including the claimed number of treatments, and would expect such a method to have similar properties and similar results to those claimed, absent unexpected results.

With respect to the claims 9-14 and 17-18, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize a kit for holding and separating the dyeing composition as described above because Nomura et al. (EP' 466) clearly teaches that the oxidation type hair dye composition are mixed with oxidized then the mixture is applied to the hair (see page 10, first paragraph), which implies that the oxidation dyeing composition hold and separates in a container differs from the one that hold the oxidizing composition and the two compositions (oxidation dye and oxidizing agents) are mixed at the time of application, and, thus

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a person of the ordinary skill in the art would expect these containers to have similar properties to those claimed, absent unexpected results.

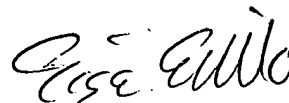
***Conclusion***

The remaining references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Patent Examiner  
Art Unit 1751

August 28, 2004